Supreme Court, U. S.
FILED
JUL 18 1977
MICHAEL RODAK, JR., CLERK

In The

Supreme Court of the United States

October Term, 1976

No. 76-1805

AARON BRAVMAN,

Petitioner,

vs.

BASSETT FURNITURE INDUSTRIES, INC. and BASSETT MIRROR COMPANY, INC.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

REPLY BRIEF FOR PETITIONER

EDWIN P. ROME
ROGER F. COX
BLANK, ROME, KLAUS & COMISKY
Attorneys for Petitioner
1100 Four Penn Center Plaza
Philadelphia, Pennsylvania 19103
(215) LO 9-3700

10828

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Plaintiff did not abandon his claim that defendants conspired to monopolize the sale of residential furniture within the territory assigned to him.

Defendants assert to this Court that plaintiff, petitioner

herein, abandoned his contention that defendants conspired to monopolize in violation of Section 2 of the Sherman Act (Brief for Respondents in Opposition to Petitioner's Cross Petition for a Writ of Certiorari, p. 4).

That defendants are incorrect in this statement is evident from an examination of pertinent sections of plaintiff's briefs in the Court of Appeals:

> "Plaintiff does not contend that defendants, or either of them, monopolized the residential furniture industry. It is submitted, however, that the evidence justified a finding that defendants attempted or conspired to monopolize the sale of residential furniture, within the territory assigned to appellant" (Brief for Appellant, p. 38).
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> * * *
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> "Because defendants acted pursuant to a conspiracy reflecting a shared purpose to exclude competitors from access to the marketplace, they violated Sections 1 and 2 of the Sherman Act" (Brief for Appellant, p. 43).
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> * * *
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> "According to defendants, 'A plaintiff who would establish a charge of attempted monopolization must [in addition to an intent to monopolize] also show that there was a

dangerous probability that the defendant would have succeeded in monopolizing the market in a reasonable period of time' (Brief for Appellees, p. 20). (Defendants appear to acknowledge that no such 'dangerous probability' need be shown to prove conspiracy to monopolize (Brief for Appellees, pp. 21-22). See *American Tobacco Co. v. United States,* 328 U.S. 781, 789 (1946).)" (Reply Brief for Appellant, pp. 7-8).

* * *

"6. The majority concluded, erroneously it is respectfully submitted, that on appeal Bravman 'limits his Section 2 charge to the claim that defendants attempted to monopolize the sale of residential furniture within the territory assigned to him.'" (Slip opinion, p. 25).

"7. Bravman in fact also contended that defendants *conspired* to monopolize the sale of residential furniture. (Brief for Appellant, pp. 38, 42-43; Reply Brief for Appellant, pp. 7-8)." (Petition of Appellant for Rehearing, pp. 2-3).

Moreover, plaintiff in his original brief in the Court of Appeals quoted the same statements from *United States v. Parke, Davis & Co.,* 362 U.S. 29, 45 (1960), and *United States v. Columbia Steel Co.,* 334 U.S. 495, 525 (1948), which appear at pages 5 and 6 of his petition herein (Brief for Appellant, p. 42).

Defendants themselves acknowledged in the Court of Appeals that "[p]laintiff has claimed that defendants conspired to monopolize the relevant market," and devoted a full page of their brief to this contention (Brief for Appellees, pp. 21-22). Plaintiff's contention that defendants conspired to monopolize was never abandoned or waived in the Court of Appeals.

CONCLUSION

For the foregoing reasons the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

s/ Edwin P. Rome
s/ Roger F. Cox

BLANK, ROME, KLAUS & COMISKY
Attorneys for Petitioner